

BEFORE THE  
POLLUTION CONTROL HEARINGS BOARD  
STATE OF WASHINGTON

IN THE MATTER OF  
HILLYARD LOCKERS,

Appellant,

vs.

SPOKANE COUNTY AIR POLLUTION  
CONTROL AUTHORITY,

Respondent.

PCHB No. 73

FINDINGS OF FACT,  
CONCLUSIONS AND ORDER

This matter is the appeal of a \$75 civil penalty imposed by respondent for an alleged violation of Section 6.03 of Regulation I of respondent, the same being the use of an unapproved incinerator at appellant's place of business, North 5803 Market, Spokane, on October 28, 1971.

The matter came before the Pollution Control Hearings Board (Walt Woodward, hearing officer) in the Spokane County Courthouse Annex at 10:30 a.m., April 19, 1972. Appellant was represented by its owner, Tom Ebel. Respondent was represented by its director, Fred A. Shiosaki.

1 Transcript of the proceeding was prepared by Nora Fay Gasman, Spokane  
2 court reporter.

3 Witnesses were sworn and testified. An exhibit was admitted.

4 On the basis of testimony heard and exhibits examined, the  
5 Pollution Control Hearings Board prepared Proposed Findings of Fact,  
6 Conclusions and Order which were submitted to the appellant and  
7 respondent on July 1, 1972. No objections or exceptions to the Proposed  
8 Findings, Conclusions and Order having been received, the Pollution  
9 Control Hearings Board makes and enters the following:

10 FINDINGS OF FACT

11 I.

12 In August of 1969, appellant firm was notified in writing by  
13 respondent that its incinerator was not of an approved type and that it  
14 was ordered not to be used to burn waste material.

15 II.

16 In November of 1970, Mr. Ebel purchased appellant firm. At this  
17 time the incinerator was being used by the former owner. Mr. Ebel  
18 continued to employ the incinerator in daily burning of waste material.

19 III.

20 On October 28, 1971, an official of respondent noticed the  
21 incinerator being used for burning of waste material, checked office  
22 records to determine that a "close" order had been issued against said  
23 incinerator in August of 1969, issued a notice of violation and levied  
24 a civil penalty of \$75.

25 IV.

26 Since receiving the notice of violation and civil penalty, Mr. Ebel  
27 has hauled his waste material to a public dump and has not used the

FINDINGS OF FACT,

1 incinerator for waste burning.

2 From these Findings, the Pollution Control Hearings Board comes to  
3 these

4 CONCLUSIONS

5 I.

6 Appellant was in violation of Section 6.03 of Regulation I of  
7 respondent in that he used for waste burning an unapproved incinerator  
8 against which respondent had issued a written "close" order.

9 II.

10 The violation was not willful. Since receiving the notice of  
11 violation and civil penalty, appellant has ceased use of the  
2 incinerator.

13 III.

14 The civil penalty, in the view of respondent, is for a "second"  
15 offense. In the view of appellant it is for a "first" offense.  
16 Because of appellant's immediate cooperation with respondent upon  
17 receipt of the notice of violation, the civil penalty appears to be  
18 excessive.

19 Based on these Findings and Conclusions, the Pollution Control  
20 Hearings Board makes the following:

21 ORDER

22 I.

23 The notice of violation was properly issued and the appeal there-  
24 from is without merit and cannot be sustained.

25 II.

26 The civil penalty of \$75 is set aside as excessive and remanded to

27 FINDINGS OF FACT,  
CONCLUSIONS AND ORDER

1 the Spokane County Air Pollution Control Authority for the assessment  
2 of a more appropriate amount.

3 DONE at Olympia, Washington this 10<sup>th</sup> day of August, 1972.

4 POLLUTION CONTROL HEARINGS BOARD

5 Matthew W. Hill  
6 MATTHEW W. HILL, Chairman

7 James T. Sheehy  
8 JAMES T. SHEEHY, Member

9 Walt Woodward  
10 WALT WOODWARD, Member

11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26 FINDINGS OF FACT,  
27 CONCLUSIONS AND ORDER